

STATE OF MICHIGAN

IN THE SUPREME COURT

(On Appeal from the Michigan Court of Appeals and  
the Circuit Court for the County of Oakland)

BRIAN J. PERRY,

Plaintiff-Appellee,

vs.

Supreme Court No: 129943

COA No: 254121

L.C. No: 03-053489-NI

GOLLING CHRYSLER PLYMOUTH  
JEEP, INC., a Michigan Corporation,

Defendant-Appellant.

SULLIVAN, WARD, ASHER & PATTON, P.C.

**DEFENDANT-APPELLANT GOLLING CHRYSLER PLYMOUTH JEEP, INC.'S  
SUPPLEMENTAL BRIEF IN SUPPORT OF APPLICATION FOR LEAVE TO  
APPEAL**

**PROOF OF SERVICE**

**RONALD S. LEDERMAN (P38199)**

**CHARLES E. RANDAU (P19214)**

Attorneys for Defendant-Appellant

1000 Maccabees Center

25800 Northwestern Highway

P. O. Box 222

Southfield, MI 48037-0222

(248) 746-0700

**FILED**

**JUN - 2 2006**

CORBIN R. DAVIS  
CLERK  
MICHIGAN SUPREME COURT

129943

**TABLE OF CONTENTS**

INDEX OF AUTHORITIES ..... ii

STATEMENT OF ISSUES PRESENTED ..... iii

SUPPLEMENTAL ARGUMENT I ..... 1

DEFENDANT GOLLING CANNOT BE HELD LIABLE UNDER THE  
OWNERSHIP LIABILITY STATUTE WHERE OWNERSHIP OF THE SUBJECT  
MOTOR VEHICLE EFFECTIVELY TRANSFERRED TO THE VEHICLE'S  
PURCHASER UPON THE EXECUTION OF THE APPLICATION OF TITLE BY  
THE PARTIES' SIGNATURES..... 1

## INDEX OF AUTHORITIES

### Cases:

<u>Goins v Greenfield Jeep Eagle, Inc,</u> 449 Mich 1; 534 NW2d 467 (1995) .....	2
---	---

**STATEMENT OF ISSUES PRESENTED**

**I. DID TITLE AND OWNERSHIP OF THE SUBJECT MOTOR VEHICLE TRANSFER TO KSENIA NICHOLS WHEN THE PARTIES TO THE SALES CONTRACT SIGNED THE APPLICATION FOR TITLE?**

Defendant-Appellant answers “Yes.”

The Michigan Court of Appeals said “No.”

The Trial Court answered “Yes.”

Plaintiff-Appellee answers “No.”

**II. DOES THE RELEASE OF THE TORTFEASOR DRIVER OF AN AUTOMOBILE OPERATE TO RELEASE THE OWNER OF THE AUTOMOBILE OF ITS DERIVATIVE LIABILITY UNDER MICHIGAN’S OWNERS LIABILITY ACT, MCL § 257.240?**

Defendant-Appellant answers “Yes.”

Plaintiff-Appellee answers “No.”

The Trial Court and Court of Appeals answer “No.”

## SUPPLEMENTAL ARGUMENT I

### DEFENDANT GOLLING CANNOT BE HELD LIABLE UNDER THE OWNERSHIP LIABILITY STATUTE WHERE OWNERSHIP OF THE SUBJECT MOTOR VEHICLE EFFECTIVELY TRANSFERRED TO THE VEHICLE'S PURCHASER UPON THE EXECUTION OF THE APPLICATION OF TITLE BY THE PARTIES' SIGNATURES.

On May 5, 2006, the Michigan Supreme Court entered an order directing the Clerk of the Court to schedule oral arguments on Defendant-Appellant's Application for Leave to Appeal. The May 5, 2006 Order further directed the parties to:

...The parties shall include among issues to be addressed at oral argument whether, under MCL 257.240 and 257.233(9), a dealer's ownership liability ceases upon completion and signing of an application for title by the applicant or, in contrast, when the application for title is placed in the mail to the Secretary of State by the dealership/titleholder. The parties may file supplemental briefs within 28 days of the date of this order, but they should avoid submitting a mere restatement of the arguments made in their application papers.

(Supreme Court Order, 5/5/06.)

By way of the May 5, 2006 Order, the Supreme Court has properly narrowed the controlling issue of whether, under the above cited statutes, the purchaser's "execution" of the Application for Title -- for purposes of transferring ownership liability upon a motor vehicle transaction -- requires only the signing of the Application for Title, rather than the subsequent mailing of the Application to the Michigan Secretary of State's Office. It has been Defendant's position that the word "execution" requires only signing (consistent with the term's common definition) and not subsequent mailing. The Court of Appeals below held that mailing was required. The Michigan Secretary of State has taken the same position as Defendant in its dealership manual provided to motor vehicle dealers within the state.

Specifically, Section 3-3.3, titled "Transfer of Interest" states as follows:

3-3.3 Transfer of Interest. When interest in a vehicle transfers from a dealer to a purchaser, the dealer is required to apply for a title and registration on behalf of the purchaser within 15 days of vehicle delivery. A transfer of interest in a vehicle occurs when two elements happen:

a) The purchaser either completes the assignment on the ownership document, or signs the application for title (RD-108); and,

b) The purchaser takes delivery of the vehicle.

(See: Michigan Secretary of State Dealer's Manual, Section 3-3.3, revised February, 2005, attached hereto as EXHIBIT A).

It is recognized that this Secretary of State manual does not have the legal force of a promulgated administrative rule. See: Goins v Greenfield Jeep Eagle, Inc, 449 Mich 1; 534 NW2d 467 (1995). Nonetheless, the manual represents the interpretation of the Secretary of State regarding the controlling statutes and it is the Secretary of State's understanding that the "execution" of the Application for Title for purposes of transferring ownership occurs when "the purchaser either completes the assignment on the ownership document, or signs the Application for Title...." EXHIBIT A.

While the Secretary of State's position does not have the force of law, its "interpretation" of the word "execution" should be entitled to deference where it is consistent with the commonly understood definition of the term.

Respectfully submitted,

**SULLIVAN, WARD,  
ASHER & PATTON, P.C.**

By:



RONALD S. LEDERMAN (P38199)  
CHARLES E. RANDAU (P19214)  
Attorneys for Defendant-Appellant  
1000 Maccabees Center  
25800 Northwestern Highway  
Southfield, MI 48075-1000  
(248) 746-0700

Dated: 6/1/06

SULLIVAN, WARD, ASHER & PATTON, P.C.

W0468864

## Section 3-3

### RETAIL TRANSACTIONS

**3-3.1 Authority.** Section 257.217 of the Michigan Vehicle Code requires a dealer to apply for title and registration on the retail purchaser's behalf within 15 days of vehicle delivery. The requirements for completing form RD-108, *Michigan Application for Title and Registration*, are outlined in Chapter 7.

**3-3.2 Requirements.** The dealer must provide a copy of each document signed, at the time of signing, to the person who signed the document. This includes the RD-108 and the front and back of the title. Written mileage disclosure must be made for nonexempt vehicles. See Chapter 4, Section 4-1 for more information.

- a) **Used Vehicles.** The odometer reading for used vehicles must be disclosed in the odometer statement of the title assignment. The dealer must properly reassign the certificate of title to the purchaser, including odometer disclosure, and must present the purchaser with both the front and back of the certificate of title prior to the time of sale.
- b) **New Vehicles.** The odometer reading for new vehicles must be disclosed in the MCO assignment; or, if the manufacturer participates in the Department's electronic MCO program for new vehicles, the dealer must disclose the odometer reading on a separate odometer statement.

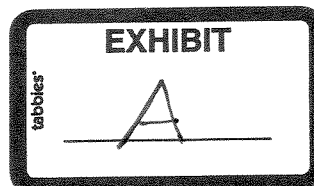
**3-3.3 Transfer of Interest.** When interest in a vehicle transfers from a dealer to a purchaser, the dealer is required to apply for a title and registration on behalf of the purchaser within 15 days of vehicle delivery. A transfer of interest in a vehicle occurs when two elements happen:

- a) The purchaser either completes the assignment on the ownership document, or signs the application for title (RD-108); and,
- b) The purchaser takes delivery of the vehicle.

*NOTE: Section 257.217 of the Michigan Vehicle Code requires that application be made within 15 days of the date of delivery. Failure to comply with this requirement will result in late fees being assessed, and may result in administrative action against the dealer's license.*

**3-3.4 Failure to Finance (Spot Delivery).** Dealers must apply for title and registration in accordance with the requirements of the Michigan Vehicle Code, regardless of the status of financing. According to the Office of Financial and Insurance Services, a finance contract is between the purchaser and the dealer. Typically, the dealer "sells the paper" to a finance company who then places a lien on the vehicle's title to secure payment.

If the finance company backs out of the transaction for any reason after interest in the vehicle transfers to the purchaser, it becomes the dealer's responsibility to secure financing for the purchaser under the same terms (e.g., interest rate, payment schedule, etc.) as the original finance contract. This may require that the purchaser make the payments directly to the dealer. To remove the finance company as lienholder and place its lien on the vehicle, the dealer completes a corrected RD-108, has the purchaser sign it, and submits it to the Secretary of State branch office for a corrected title.





STATE OF MICHIGAN  
IN THE COURT OF APPEALS

(On Appeal from the Circuit Court for the County of Oakland)

BRIAN J. PERRY,

Plaintiff,

vs.

COA No. 254121  
L.C. No: 03-053489-NI

GOLLING CHRYSLER PLYMOUTH  
JEEP, INC., a Michigan Corporation,

Defendant.

---

**PROOF OF SERVICE**

Terry Lichko says that on June 1, 2006, she served a copy of Defendant-Appellant's Supplemental Brief in Support of Application for Leave to Appeal and this Proof of Service on counsel of record by placing same in envelope(s) properly addressed to:

Larry Barnett  
Scott R. Traver  
Attorneys for Plaintiff  
3520 Pontiac Lake Road  
Waterford, MI 48328

Robert Y. Weller, II  
Attorney for proposed Amicus  
Detroit Auto Dealers Association  
300 River Place, Suite 3000  
Detroit, MI 48207-4225

Raymond J. Foresman  
Attorney for proposed Amicus  
Michigan Auto Dealers Association  
333 Albert Avenue, Suite 500  
East Lansing, MI 48823

and depositing the said envelope(s) in the United States mail, postage thereon fully prepaid.

I hereby declare that the statement above is true to the best of my knowledge,  
information and belief.

  
Terry Lichko

W0468864

SULLIVAN, WARD, ASHER & PATTON, P.C.